

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ALTA LAB CASEWORK, LTD.,

Plaintiff and Respondent,

v.

MID CANADA MILLWORK, LTD.,

Defendant and Appellant.

2d Civil No. B208086  
(Super. Ct. No. 1266304)  
(Santa Barbara County)

ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on November 25, 2009, be modified as follows:

1. On page 1, the first full paragraph in the section entitled "FACTUAL AND PROCEDURAL BACKGROUND" is deleted and replaced with the following paragraph:

Hensel Phelps Construction Co. (Hensel) served as prime contractor under contracts with the University of California Santa Barbara and CalPERS (the prime contracts). In 2003 and 2004, Hensel and MCM entered into two contracts (the Hensel contracts)

whereby MCM would provide services for each project. The pertinent provisions of the Hensel contracts for the two projects are substantially identical.

2. On page 2, the first full paragraph beginning with, "In 2004, MCM" and ending with "provisions:" is deleted and the following paragraphs are inserted in its place:

In 2004, MCM and Alta entered into two subcontracts whereby Alta would perform services for each project (the subcontracts). The first section of each subcontract defines the Contract Documents to include the prime contract, the Hensel contract, and the subcontract. The same section also states that "[i]t is further agreed that the Contract Documents are incorporated in this Agreement by this reference, with the same force and effect as if the same were set forth at length herein, and that SUBCONTRACTOR [Alta Lab] and his subcontractors will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly to the work covered by this Agreement. *SUBCONTRACTOR [Alta] agrees to be bound to MCM in the same manner and to the same extent as MCM is bound to PRIME CONTRACTOR [Hensel Phelps]* AND PRIME CONTRACTOR [Hensel Phelps] IS BOUND to OWNER under the Contract Documents . . . ." (Italics added.)

Each subcontract contains other relevant provisions which are set forth below:

3. On page 6, the third full paragraph which begins, "As the trial court stressed," is deleted.

4. The paragraph commencing at the bottom of page 6 with "MCM claims" and ending at the top of page 7 with "(Italics added.)" is deleted.

5. On page 7, the first full paragraph that begins, "Thus, the subcontracts" is deleted and the following paragraphs are inserted in its place:

MCM claims that the following contract language mandates the arbitration of disputes between Alta and MCM: "if the Hensel Contracts 'contain a provision for arbitration of disputes,' the mandatory binding arbitration clause detailed in the Subcontracts shall be in effect." In making this claim, MCM ignores the following relevant language in each subcontract: *"SUBCONTRACTOR [Alta] agrees to be bound to MCM in the same manner and to the same extent as MCM is bound to PRIME CONTRACTOR [Hensel Phelps] . . . under the Contract Documents . . ."* (Italics added.)

In its briefs and during oral argument MCM stressed that the prime contracts were not before the trial court and are not part of the record. However, the Contract Documents include the Hensel contracts. The Hensel contracts indicate that disputes between Hensel and MCM may, "upon [their] mutual agreement . . . be submitted to arbitration." In replying to ALTA's response to the petition to compel arbitration, MCM acknowledged that the Hensel contracts provide for voluntary arbitration.

Alta agreed to be bound to MCM to the same extent that MCM is bound to Hensel under the Contract Documents. Because MCM is not required to arbitrate its disputes with Hensel, Alta is not required to arbitrate its disputes with MCM.

There is no change in the judgment.

Appellant's petition for rehearing is denied